

## **LIST OF CHANGES TO PROPOSED DISCIPLINARY RULES**

**Note: minor editing changes are not listed here.**

### **Rule 46(f). Definitions**

#### **Page 5:**

- Revised definition of “disciplinary clerk” as custodian of the record of proceedings before the ARC, the PDJ, and the hearing panel (as opposed to the supreme court).

#### **Page 6:**

- Revised definition of “filing” to clarify that filing may require delivery to either the disciplinary clerk or the clerk of the court, as appropriate; also deleted word “original,” as Rule 32(j) does not require an original document for filing.
- Revised definition of “misconduct” to include “conduct that is eligible for diversion.”
- Revised definition of “record” to clarify that the definition is only applicable to these rules (different definition in Rule 123).

#### **Page 7:**

- Revised definition of “state bar file” by deleting “working files.”

### **Rule 47. General Procedural Matters.**

#### **Page 8:**

- Revised 47(c) regarding service; created separate sections for service of complaint and service of subpoenas, pursuant to discussion at last meeting. Section dealing with subpoenas requires personal service on respondent, with alternative of certified mail if personal service is impracticable.

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\* This list, which correlates to Draft No. 9, includes all agreed upon changes made to the initial proposal filed with the supreme court (Draft No. 7), as suggested by committee members, staff, and the public.

**Page 9:**

- Added requirement in 47(g) that transcripts be prepared in accordance with Rule 30.
- Added provision in 47(h) that service of subpoenas shall be as set forth in 47(c)(2).
- Added language in 47(h)(1) to eliminate ambiguity about whether chief bar counsel or the chair/vice-chair has authority to issue a subpoena, and not merely approve requests for a subpoena.

**Page 10:**

- Deleted 47(h)(4)(B) regarding service of subpoenas; language was moved to paragraph 47(c)(2).

**Page 11-14:**

- Added chief bar counsel to subpoena heading and to signature line in subpoena form (47(i)), and changed paragraph order in "Your Duties in Responding to this Subpoena."

**Page 16:**

- Revised 47(l)(1) to require attorney to notify bar counsel upon termination of representation of respondent prior to the filing of a formal complaint.
- Added new section – 47(l)(3) – requiring notice of appearance to be filed in the supreme court.
- Limited requirement of approval for withdrawal or substitution of counsel in 47(l)(4) (previously 47(l)(3)) to "after the filing of a formal complaint."

**Rule 48. Rules of Construction****Page 16-17:**

- Revised 48(b) to clarify the applicability of the civil rules before the ARC, the PDJ, and the hearing panel (as opposed to the supreme court), and to add references to Civil Rule 5 (service of pleadings), 5(f) (placing responsibility for redaction of sensitive information in filings on the party filing the document) and Civil Rule 56, which is referenced in Rule 47.

**Page 18:**

- Revised 48(k)(1) to provide that a dismissal by the state bar at any stage, not just following a screening investigation, does not bar further action.

#### **Rule 49. Bar Counsel**

##### **Page 25:**

- Revised 49(a)(2)(C)(ii) to clarify that admonition with probation is posted on the website.

#### **Rule 50. Attorney Regulation Committee**

##### **Page 27:**

- Revised 50(c) to permit chief justice to appoint the chair and vice-chair of the Attorney Regulation Committee instead of having committee members elect them.

#### **Rule 51. PDJ**

##### **Page 28:**

- In 51(a), added provision that court will periodically review and evaluate performance of the PDJ.
- Revised 51(b) to require PDJ to be an active or judicial member of the state bar and to have been admitted to the practice of law for five years (eliminated requirement of state bar membership for five years).

#### **Rule 52. Hearing Panels**

##### **Page 29:**

- Specified in 52(b) that volunteer attorneys in hearing panel pool may serve as settlement officers.
- In 52(c), eliminated limitation on volunteer panel members serving consecutive terms.

##### **Page 30:**

- In 52(h)(1), clarified that hearing panel's jurisdiction over contempt proceedings does not include proceedings under Rule 47, which authority is vested in the PDJ.
- In 52(h)(3), clarified hearing panel's authority to dismiss a complaint.

## **Rule 53. Complainants**

### **Page 31:**

- In 53(b)(2), added language to provide for review by chief bar counsel after dismissal occurring during intake, and to provide for notification by phone; clarified distinction between dismissal during intake and dismissal following a screening investigation, which requires notification by mail.

## **Rule 54. Grounds for Discipline**

### **Page 33:**

- In 54(g) added language previously in 61(c)(1) regarding effect of receipt by the state bar of proof that a lawyer has been convicted of a felony.

## **Rule 55. Initiation of Proceedings; Investigation**

### **Page 37**

- Revised 55(a)(2)(B) to permit state bar to enter into a diversion agreement without a full screening investigation where “warranted” (deleted language precluding diversion where there is deceit, dishonesty or actual harm to a client).
- Revised language in 55(a)(2)(C) to provide guidance for when to send a charge into screening (“if alleged conduct may “warrant” the imposition of a sanction).

### **Page 38:**

- In 55(b)(2)(A)(ii) added “to the state bar” to clarify where complainant files an objection to dismissal; deleted provision that objections be referred to the committee for decision “in the same manner” as other cases coming before it to clarify that respondent does not have opportunity to be heard at this stage.

### **Page 39:**

- Redundant language was stricken in 55(c).
- In 55(c)(2)(D), added language permitting committee to consider in determining whether to authorize a complaint whether respondent has previously participated in diversion.

## **Rule 56. Diversion**

### **Page 41:**

- Added language in 56(b) permitting diversion agreements “where the conduct so warrants,” eliminating reference to conduct involving “deceit, dishonesty or actual harm to a client.”

## **Rule 57(a). Discipline by Consent**

### **Page 44:**

- Added language in 57(a)(2)(E) regarding Civil Rule 5(f), placing responsibility on parties to redact sensitive data from documents filed with an agreement for discipline by consent.

### **Page 46:**

- In 57(a)(4)(C) (rejection of agreement) added requirement that PDJ state reasons for rejection of agreement for discipline by consent.

## **Rule 57(b). Reciprocal Discipline**

### **Page 47:**

- In 57(b)(1) added “suspended” as a class of membership for purposes of requirement that lawyers disciplined in another jurisdiction notify the disciplinary clerk of the discipline.

## **Rule 58. Formal Procedures**

### **Page 50:**

- Revised 58(d) to require default to be entered on the 11<sup>th</sup> day instead of the 10<sup>th</sup> (respondent may still file an answer on the 10<sup>th</sup> day).

### **Page 52-53:**

- Revised 58(h) to allow telephonic participation at prehearing conference.

### **Page 55:**

- Changed requirement in 58(k) that hearing panel notify the court when its report will be untimely; instead panel should notify parties (eliminates notice being filed in court when there is no case there).

## Rule 59. Review by the Court

### Page 58:

- Generally, new provisions added to require notice of appeal and briefs to be filed with disciplinary clerk, who transmits the record to the clerk of the court once the appeal is perfected and all briefs have been filed.
- In 59(a), added requirement that a copy of the notice of appeal be served on the opposing party *and* the clerk of the court.
- **Alternative 1 for 59(c):** Revised to provide for automatic stay except when an interim suspension is ordered or when no conditions of probation and supervision will protect the public.
- **Alternative 2 for 59(c):** Revised to provide respondent must file request with hearing panel for stay pending appeal; stay shall be granted except when interim suspension is ordered or when no conditions of probation and supervision will protect the public.
- Revised procedure in 59(d) for filing additional transcripts; party requiring additional transcripts must notify disciplinary clerk of intent to file additional transcripts and advise when transcripts will be filed; transcripts are filed with the disciplinary clerk and served on the opposing party.

### Page 59:

- New language added in 59(h) requiring perfection of the appeal (timely filing of notice of appeal and opening brief) as a precondition for transmitting the record to the court.
- New language added in 59(i) specifying that appeal will be deemed abandoned if not fully perfected, resulting in dismissal.
- New language in 59(j) provides for transmittal of record to the court following expiration of the time for filing appellate briefs.

## Rule 60. Sanctions

### Page 62-63:

- Revised to refer to "judgment and order" in 60(a)(2), 60(a)(3), and 60(a)(4).

### Page 64:

- Added procedure in 60(b)(2)(A) for disciplinary clerk to file a statement of costs and expenses.

## **Rule 61. Interim Suspension by the Court**

### **Page 66:**

- Deleted language set forth in Draft 8 in 61(c)(1) regarding effect of state bar's receipt of certified copy of judgment of conviction of a lawyer; language moved to 54(g) (grounds for discipline).
- Revised language in 61(c)(1)(A) to provide suspension takes effect after the court's receipt of the proof of a lawyer's felony conviction, unless, within ten days, the lawyer files a motion showing good cause why the suspension should not be entered.

### **Page 68:**

- Revised 61(d) to require the clerk of the court to serve (instead of "forward") copy of an order of interim suspension on the respondent, as well as on the disciplinary clerk and the state bar.

## **Rule 63. Transfer to Disability Inactive Status**

### **Page 70:**

- Revised 63(b)(1) and (2) to require service on the clerk of the court of an order transferring a lawyer to disability status or an interim order of incapacity.

## **Rule 64. Reinstatement; Eligibility**

### **Page 78:**

- Revised 64(f)(1)(B)(iii), relating to proof required for reinstatement, to require showing that the suspended member has not "had a disciplinary sanction imposed."

## **Rule 65. Reinstatement; Application and Proceedings**

### **Page 78:**

- Changed requirement in 65(a)(1) that application for reinstatement be accompanied by authorization for the state bar, instead of the PDJ, to obtain information for third parties.

**Page 82:**

- Revised 65(b)(4) to eliminate language conflicting with other provisions requiring respondent to pay costs of the proceeding up front; added broader language providing that the court shall reinstate the lawyer "subject to any conditions deemed necessary."

**Rule 70. Public Access to Information**

**Page 87:**

- Added reference in 70(b) to Rule 123 to clarify that the exceptions to public access under this rule take precedence over Supreme Court Rule 123.
- Added "settlement officer" to the list in 70(b)(1) of staff whose work product is confidential.

**Page 87-88:**

- Added new provisions in 70(b)(8)-(10) making trust account records, social security numbers, and financial account numbers confidential.

**Rule 72. Notice to Clients, Adverse Parties and Other Counsel**

**Page 90:**

- Added authority in 72(d) for PDJ, in addition to the court, to specify earlier effective date for suspension or disbarment (under new rules, PDJ may issue the judgment).

**Rule 74. Certificates of Good Standing**

**Page 93:**

- Deleted reference to Attorney Regulation Committee in 74(c), as ARC will not hear public disciplinary proceedings.

**Rule 75. Jurisdiction; Definitions [Unauthorized Practice of Law]**

**Page 93-94:**

- In 75(b), added definition of "committee" (ARC) and deleted definition of "panel" or "panelist."



## **Rule 77. Participants in UPL Proceedings**

### **Page 94:**

- In 77(c), deleted “probable cause panel or panelist,” which currently has power to issue investigative subpoenas in UPL proceedings, and replaced with “chief bar counsel or the chair or vice-chair of the committee,” to coincide with Rule 47(h)(1) (investigative subpoenas).

## **Rule 78. Initial Proceedings (UPL)**

### **Page 94:**

- Added language to 78(b)(1) to correspond with Rule 55(a), which requires the state bar to evaluate information coming to its attention “in any form.”

### **Page 95:**

- Revised 78(b)(2) to require respondent to respond to request for information within 20 days of “notice” of the request for information instead of within 20 days of “mailing” request.
- Eliminated references in 78(b)(3)(B) to “the panelist” and “the panel” and replaced with “the committee” in regard to imposition of costs of deposition if respondent does not respond.
- Replaced references in 78(b)(4) to the probable cause panelist with the chief bar counsel or the chair or vice-chair of the committee (relating to investigative subpoenas).